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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST NO. 16885 OF 2024

WITH

INTERIM APPLICATION NO. 10474 OF 2024

INTERIM APPLICATION NO. 10269 OF 2024

IN

APPEAL FROM ORDER ST NO. 16885 OF 2024

Rajaram Ramprasad Tilak @ Dhobi

.....Appellant

Vs.

Municipal Corporation of Greater Mumbai
and ors

.....Respondents

Mr. Jagdish Narayanrao Jayale for the appellant

Mr. Anand Khairnar i/b Ms. Komal Punjabi for respondent nos. 1 to 3

Mr. S. C. Naidu a/w Mr. Manoj Gujar, Ms. Divya Yajurvedi, Mr. Pradeep Kumar, Mr. Abhishek Ingale for respondent no. 4

CORAM : GAURI GODSE, J.

DATE : 11th MARCH 2025

ORDER:

INTERIM APPLICATION NO. 10474 OF 2024:

1. This application is for condonation of delay of approximately 8 days in filing the appeal.

2. Since the delay is of a negligible period of around 8 days, there

is no serious opposition for the condonation of delay.

3. Hence, the application is allowed in terms of prayer clause (a).

APPEAL FROM ORDER ST NO. 16885 OF 2024:

4. I have heard learned counsel for the appellant at length on the merits of the appeal. This appeal is preferred by the plaintiff to challenge the rejection of his notice of motion seeking protection from execution of the notice issued by the corporation under section 351 of The Mumbai Municipal Corporation Act, 1888 (MMC Act).

5. Learned counsel for the appellant submits that the corporation had initially issued a notice in respect of the same suit structure on 2nd December 2019. He submits that the first notice indicated that there was an existing structure on the ground floor and first floor. He submits that the notice was challenged by way of a suit, however, interim protection was not granted. Hence, the offending structure as per the first notice was demolished. He submits that though the offending structure as per the first notice was demolished, respondent no. 4 who is the owner of the property, filed a fresh complaint before the corporation. He submits that the corporation passed an order on 4th March 2022 and rejected the grievance made by the owner. He submits that inspite of rejecting the grievance made by the owner,

corporation issued a fresh notice on 22nd September 2022 alleging that there was unauthorised construction on the first floor on the existing ground floor structure. He submits that after demolition as per the first notice, there was no construction carried out by the appellant. He submits that since beginning, the appellant is in possession of 750 square feet area on the ground floor as well as first floor. He, therefore, submit that only on a complaint filed by the owner, a fresh notice is issued, which is illegal, as there is no fresh construction carried out by the appellant.

6. He, further submits that in the conveyance dated 27th March 1962 executed in favour of respondent no. 4, the area and the name of tenants are not disclosed. Hence, there is no source of information available with the owner regarding the exact area allotted to the tenants. He submits that in a connected suit where a similar notice is issued regarding unauthorised construction, interim protection is granted by the City Civil Court and the same is confirmed by this Court. He, therefore, submits that in a similarly situated structure, there will be inconsistent orders, if the protection is not granted to the present appellant. He submits that in a similarly situated structure, if the protection is not granted, it is likely that same will also cause

prejudice to the other structures in respect of which suits are also pending in the City Civil Court.

7. Learned counsel for the appellant further submits that the rent receipts produced on record though indicates area of only 236 square feet, there is no source of information available at present to indicate that only an area of 236 square feet was allotted to the plaintiff. He submits that since there are disputed questions involved in the suit, the appellant is entitled to lead evidence to support his contentions in respect of 750 square feet area on the ground floor as well as the first floor. He, therefore, submits that in the absence of any specific evidence as to exactly which area was allotted to the plaintiff, the plaintiff cannot be thrown out based on the notice issued under Section 351 of the MMC Act by the corporation. He submits that if interim protection is not granted, the appellant is likely to be thrown out from his area lawfully occupied as tenant.

8. Learned counsel for the appellant therefore, submits that the notice of motion is required to be remanded back to the trial Court for deciding it afresh for recording specific findings on the exact area in possession of the plaintiff based on his original tenancy. He, thus, submits that the first notice issued by the corporation itself indicates

that there was always an existing structure on the ground floor as well as first floor. He, thus, submits that the fresh notice is illegally issued by ignoring that there was always an existing ground floor and first floor structure. Thus, there is no unauthorised construction carried out after demolition as per the first notice. He, therefore, submits that the impugned order would require interference by this Court.

9. I have perused the papers of the appeal. There is no dispute that the first notice dated 2nd December 2019 is implemented and the offending structure described in the notice is removed. The offending structure described in the first notice reads as unauthorised horizontal extension to the existing structure and construction of a room on the first floor admeasuring 2.65m x 4.65m x 2.80m (ht). Present impugned notice is dated 22nd September 2022 which alleges there is unauthorised construction of the first floor admeasuring 6.3m x 6.2m x 3.1m (ht) on the existing ground floor structure and unauthorised construction of a toilet on the first floor admeasuring 1.1m x 1m x 2.1m(ht). The offending structure described in the first notice and the present impugned notice is completely different. The first notice alleges the unauthorised construction on the ground floor as well as a room on the first floor. The present impugned notice alleges

unauthorised construction only on the first floor on the existing ground floor structure.

10. Except for submitting that the appellant was inducted in respect of 750 square feet area on the ground floor as well as first floor, nothing is produced on record to indicate that the alleged unauthorised construction in the impugned notice was always in existence even at the time of issuing first notice. There is also nothing on record to indicate that after the first notice was implemented and the offending structure was removed, the balance structure which remained is existing structure which is described as unauthorised in the impugned notice of 22nd September 2022. Learned counsel for the appellant has annexed copies of the rent receipts on record. Some of the rent receipts indicate an area of 236 square feet. There is no document on record to indicate that the appellant was anytime inducted in an area of 750 square feet as contended by the appellant.

11. A perusal of the reasons recorded in the impugned order indicates that in the absence of any document to support the plaintiff's contention in respect of the area in possession of the plaintiff, the interim protection has been refused. In the impugned order, the concerned Judge of the City Civil Court has therefore, refused to

accept the plaintiff's contention that the offending structure is in existence prior to the datum line. Therefore, the arguments raised on behalf of defendant no. 4 who is the owner and the corporation are accepted that the offending structure as described in the impugned notice issued by the corporation is an unauthorised construction. In the absence of any document which would even prima facie indicate that after the removal of the offending structure as per the first notice, the remaining structure is the one as described in the present notice, which was always in existence, I see no fault in the refusal of the interim protection by way of the impugned order.

12. The impugned order is passed after considering the basic principles for granting discretionary relief under Order XXXIX Rule 1 of Code of Civil Procedure, 1908. I see no reason to interfere in the impugned order. The appeal is devoid of any merit.

13. Hence, the appeal is dismissed.

14. In view of dismissal of appeal, all pending applications are disposed of as infructuous.

15. At this stage, learned counsel for the appellant seeks extension of the interim protection granted by this Court on 8th July 2024 to

enable the appellant to approach the Hon'ble Apex Court.

16. Since the interim protection is operating till date, the same shall continue to operate for a period of four weeks from today, subject to condition that the appellant shall not carry out any further construction or create third party rights or part with possession of the structure in the possession of the appellant.

[GAURI GODSE, J.]